TAN EAN LENG & ANOR.

v.

PENTADBIR TANAH DAERAH KUALA MUDA SUNGAI PATANI

HIGH COURT MALAYA, ALOR SETAR
LIM BENG CHOON J
[ORIGINATING MOTION NO. 32-23-86]
22 FEBRUARY 1987

LAND LAW: *Alienated land - Whether dealing entered into by the application/plaintiffs by way of purchase and sale agreement is a registrable dealing - Whether Registrar right in refusing to register instrument - Ambiguity or uncertainty in wordings in statute - Effect of.*

The sole question in this case was whether the dealing entered into by the applicant namely the purchase and sale agreement relating to alienated land is a registrable dealing under the National Land Code.

Held:
The Court was of the view that Registrar was wrong in refusing to register the instrument of transfer presented to him.

[Order in terms.]

Case referred to:
Tan Hong Chit v. Lim Kin Wan [1964] 30 MLJ 113

Legislation referred to:
National Land Code 1965, s. 205 (3), (5)

For the plaintiff - V. Muthusamy; M/s. V. Muthusamy & Co.
For the defendant - Abdul Malik bin Haji Ishak; State Legal Adviser Kedah

JUDGMENT

Lim Beng Choon J:

The sole question in the present case is therefore whether the dealing entered into by the applicant namely the purchase and sale agreement relating to the land in question is a registrable dealing under the National Land Code. Although sub-section (3) of s. 205 of the National land Code provides that no dealing in respect of any alienated land or any interest therein subject to category agriculture shall be effected if such dealing would have the effect of creating any undivided share of such size that would be less than 2/5 of a hectare nevertheless by the 2nd amendment by Act A615 it is clearly stated that nothing contained in sub-section (3) shall render invalid any instrument in dealing in any alienated land executed under this part before the commencement of this subsection. To my mind the effect of the new subsection (5) validates the dealings as contained in the application for transfer made to the Registrar. In any event even if there is any ambiguity or uncertainty in the wordings of sub-section (5) it should be construed in favour of the applicant. In this respect I would refer to the case of *Tan Hong Chit v. Lim Kin Wan* [1964] 30 MLJ 113 where Lord Suffian (as he then was) said:

It has been held by the Privy Council in *David v. De Silva*, that where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to.

In view of the authority and of the proper construction of sub-section (5) I am of the view that the Registrar was wrong in refusing to register the instrument of transfer as presented to him. I therefore granted order in terms in respect of prayers (1), (2), (3) and (6).

Also found at [1989] 1 CLJ 812